

(Rev. 01/21) Complaint for Violation of Civil Rights (Prisoner)

UNITED STATES DISTRICT COURT

for the

Western District of New York

Case No.

22-cv-6255 CJS
~~10-cv-6572 CJS~~
(to be filled in by the Clerk's Office)

MR. DAMECHA HARRIS, (Pro-se)

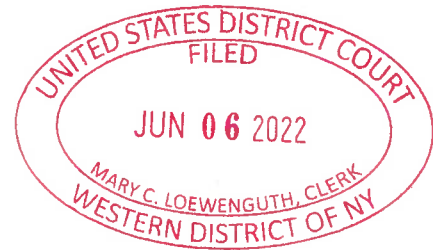
Plaintiff(s)

(Write the full name of each plaintiff who is filing this complaint.
If the names of all the plaintiffs cannot fit in the space above,
please write "see attached" in the space and attach an additional
page with the full list of names.)

-v-
MR. FRANK J. CLARK, District
Attorney, et al.

Defendant(s)

(Write the full name of each defendant who is being sued. If the
names of all the defendants cannot fit in the space above, please
write "see attached" in the space and attach an additional page
with the full list of names. Do not include addresses here.)

JURY TRIAL: Yes ___ No ☒

COMPLAINT FOR VIOLATION OF CIVIL RIGHTS

(Prisoner Complaint)

NOTICE

Federal Rules of Civil Procedure 5.2 addresses the privacy and security concerns resulting from public access to electronic court files. Under this rule, papers filed with the court should *not* contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include *only*: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number.

Except as noted in this form, plaintiff need not send exhibits, affidavits, grievance or witness statements, or any other materials to the Clerk's Office with this complaint.

In order for your complaint to be filed, it must be accompanied by the filing fee or an application to proceed in forma pauperis.

(Rev. 01/21) Complaint for Violation of Civil Rights (Prisoner)

I. The Parties to This Complaint**A. The Plaintiff(s)**

Provide the information below for each plaintiff named in the complaint. Attach additional pages if needed.

Name

MR. DAMECHA HARRIS

All other names by which
you have been known:

ID Number

92A1389

Current Institution

COXSACKIE CORR. FACILITY

Address

P.O. Box - 999

COXSACKIE N.Y. 12051

City

State

Zip Code

B. The Defendant(s)

Provide the information below for each defendant named in the complaint, whether the defendant is an individual, a government agency, an organization, or a corporation. Make sure that the defendant(s) listed below are identical to those contained in the above caption. For an individual defendant, include the person's job or title (*if known*) and check whether you are bringing this complaint against them in their individual capacity or official capacity, or both. Attach additional pages if needed.

Defendant No. 1

Name

MR. FRANK J. CLARK

Job or Title (*if known*)

FORMER DISTRICT ATTORNEY

Shield Number

UNKNOWN

Employer

ERIE COUNTY DISTRICT ATTORNEY'S OFFICE

Address

25 - DELAWARE AVE.

BUFFALO

N.Y.

14202

City

State

Zip Code



Individual capacity



Official capacity

Defendant No. 2

Name

MR. MICHAEL J. COOPER

Job or Title (*if known*)

FORMER ASSISTANT DISTRICT ATTORNEY

Shield Number

UNKNOWN

Employer

MR. FRANK J. CLARK

Address

25 - DELAWARE AVE.

BUFFALO

N.Y.

14202

City

State

Zip Code



Individual capacity



Official capacity

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Defendant No. 3

Name
Job or Title (if known)
Shield Number
Employer
Address

MR. Fredrick J. PLATEK
Former Assistant District Attorney
Unknown
MR. Frank J. Clark
25- Delaware Ave
Buffalo NY 14202
City State Zip Code

☒ Individual capacity ☐ Official capacity

Defendant No. 4

Name
Job or Title (if known)
Shield Number
Employer
Address

MS. Donna A. MILLING
Former Assistant District Attorney
Unknown
MR. Frank J. Clark
25- Delaware Ave.
Buffalo NY 14202
City State Zip Code

☒ Individual capacity ☐ Official capacity

II. Basis for Jurisdiction

Attached next two pages

Under 42 U.S.C. § 1983, you may sue state or local officials for the “deprivation of any rights, privileges, or immunities secured by the Constitution and [federal laws].” Under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), you may sue federal officials for the violation of certain constitutional rights.

A. Are you bringing suit against (check all that apply):

- ☐ Federal officials (a *Bivens* claim)
☒ State or local officials (a § 1983 claim)

B. Section 1983 allows claims alleging the “deprivation of any rights, privileges, or immunities secured by the Constitution and [federal laws].” 42 U.S.C. § 1983. If you are suing under section 1983, what federal constitutional or statutory right(s) do you claim is/are being violated by state or local officials?

my constitutional rights not to be deprived of my
liberty or property or to be arrested, detained or
imprisoned except upon probable cause to believe
I am guilty of a crime, under the fourth Attached

C. Plaintiffs suing under *Bivens* may only recover for the violation of certain constitutional rights. If you are suing under *Bivens*, what constitutional right(s) do you claim is/are being violated by federal officials? Next pg.

DEFENDANT NO. 5

NAME: MR. STEPHAN GAMBINO

JOB OR TITLE [IF KNOWN] CORRECTIONAL OFFICER

SHIELD NUMBER [UNKNOWN]

EMPLOYER: MR. ANTHONY J. ANNUNCI

For the Department of Corrections and Community Supervision

The Harriman State Campus

1220 Washington Avenue

Campus Building NO. 2

Albany, New York 12226

Address: Wende Correctional Facility

3040 Wende Road Aiden

Alden New York 14004

DEFENDANT NO. 6 MR. ANTHONY J. ANNUNCI,
NAME

JOB OR TITLE [IF KNOWN] Acting Commissioner

SHIELD NUMBER: [UNKNOWN]:

Employer: Acting Commissioner For the Dept
of Corrections and Community
Supervision The Harriman State
Campus Building NO. 2,

1220 Washington Avenue

Albany, New York 12226

DEFENDANT NO. 7

NAME: MS. MARY M. DONAGHER

[Cont. From PAGES 3 OF 1]

Job title [if known] (Defense trial Attorney)
SHIELD NO. (unknown)

EMPLOYER: MR. DAVID C. SCHOPP
Executive Attorney, for the
Legal Aid Bureau of
Buffalo Inc. 237 Main Street
Suite - 1602
Buffalo, New York 14203

~~DEFENDANT NO. 8~~

~~ADDRESS:~~ the Legal Aid Bureau of Inc
237 Main Street, Suite - 1602
Buffalo, New York 14203.

DEFENDANT NO. 8 #

NAME: MS. Roland Hayes

Job title [if known] (Appeals Attorney)

SHIELD NO. (unknown)

EMPLOYER MR. DAVID C. SCHOPP
Executive Attorney for the
Legal Aid Bureau of
Buffalo Inc. 237 Main St
Suite - 1602
Buffalo, New York 14203

ADDRESS: the Legal Aid Bureau of Inc
237 Main Street - Suite - 1602
Buffalo, New York 14203

[Cont. from PAGES 3 of 1]

II Basis for Jurisdiction, B.

B. SECTION 1983 allow claims alleging the deprivation of any rights, privileges, or immunities, secured by the Constitution and [Federal laws] 42 section 1983. What Federal Constitutional or Statutory right(s) do you claim is or are being violated by State or local officials?

My Constitutional rights not to be deprived of my liberty or property, or to be arrested, detained, or imprisoned except upon Probable Cause, to believe me guilty of a crime, under the ~~Fourth~~ Fourth, Fifth and Fourteenth Amendments to due Process of Law

[~~End~~ End of PAGES 3 of 11]

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- D. Section 1983 allows defendants to be found liable only when they have acted "under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia." 42 U.S.C. § 1983. If you are suing under section 1983, explain how each defendant acted under color of state or local law. If you are suing under *Bivens*, explain how each defendant acted under color of federal law. Attach additional pages if needed. Each of these defendants as mentioned all have acted under State and Federal laws under the Fourth, Fifth and Fourteenth Amendments of my constitutional rights [Not to be arrested, indictment, prosecuted or detained in violation of the Due process clause of the Fourth, Fifth, Amendment of the right to a Grand Jury indictment under the Fifth and Fourteenth Amendments]

III.

Prisoner Status

Indicate whether you are a prisoner or other confined person as follows (check all that apply):

- ☐ Pretrial detainee
- ☐ Civilly committed detainee
- ☐ Immigration detainee
- ☒ Convicted and sentenced state prisoner
- ☐ Convicted and sentenced federal prisoner
- ☐ Other (explain) _____

IV. Statement of Claim

State as briefly as possible the facts of your case. Describe how each defendant was personally involved in the alleged wrongful action, along with the dates and locations of all relevant events. You may wish to include further details such as the names of other persons involved in the events giving rise to your claims. Do not cite any cases or statutes. If more than one claim is asserted, number each claim and write a short and plain statement of each claim in a separate paragraph. Attach additional pages if needed.

- A. If the events giving rise to your claim arose outside an institution, describe where and when they arose.

- B. If the events giving rise to your claim arose in an institution, describe where and when they arose.

While I was confined at the Wende C.F. located in Erie County, while continuing serving my previous Queens County, February 6th 1992 Robbery conviction while confined still at the Wende C.F.

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- C. What date and approximate time did the events giving rise to your claim(s) occur? On January 25th 1997, at the approximate time 9:30 AM I was awoken by Mr. Stephen Gambino. Who is a employee at the Wende CT. I was told by Mr. Gambino that he was given orders
- D. What are the facts underlying your claim(s)? (For example: What happened to you? Who did what? Was anyone else involved? Who else saw what happened?) by his Correctional Sergeant Supervisor to search my cell, 4 cell, on 16-Company in C-Block. While this same officer Gambino conducted this cell search of mine the Plaintiff Mr. Harris, this same officer started ripping up my legal papers and other personal property when I confronted him, without putting my hands on the officer I was attacked and assaulted by this officer with out just cause, and the officer made it seem to cover up the assault which he inflicted on me to pretend like he was the one assault
- V. Injuries

If you sustained injuries related to the events alleged above, describe your injuries and state what medical treatment, if any, you required and did or did not receive.

I didn't received any injuries, because I was assaulted below my body which wouldn't show any injuries I didn't receive any treatment due to medical cover up the incident

VI. Relief

State briefly what you want the court to do for you. Make no legal arguments. Do not cite any cases or statutes. If requesting money damages, include the amounts of any actual damages and/or punitive damages claimed for the acts alleged. Explain the basis for these claims.

the relief I request, for the acts alleged. committed by each defendant for the past 22 1/2 years and counting for fabrication of evidence on September 9th 1997. and neither defendant is entitled to qualified immunity because the law was clearly established in 1996. I am requesting money damages for each defendants in the amount of \$ 20,000.00 each

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VII. Exhaustion of Administrative Remedies Administrative Procedures

The Prison Litigation Reform Act ("PLRA"), 42 U.S.C. § 1997e(a), requires that "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted."

Administrative remedies are also known as grievance procedures. Your case may be dismissed if you have not exhausted your administrative remedies.

A. Did your claim(s) arise while you were confined in a jail, prison, or other correctional facility?

☒ Yes

☐ No

If yes, name the jail, prison, or other correctional facility where you were confined at the time of the events giving rise to your claim(s). *Wende C.F. One Coxsackie C.F.*

B. Does the jail, prison, or other correctional facility where your claim(s) arose have a grievance procedure?

☒ Yes

☐ No

☐ Do not know

C. Does the grievance procedure at the jail, prison, or other correctional facility where your claim(s) arose cover some or all of your claims?

☐ Yes

☒ No

☐ Do not know

If yes, which claim(s)?

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- D. Did you file a grievance in the jail, prison, or other correctional facility where your claim(s) arose concerning the facts relating to this complaint?

☒ Yes

☐ No

If no, did you file a grievance about the events described in this complaint at any other jail, prison, or other correctional facility?

☐ Yes

☐ No

- E. If you did file a grievance:

1. Where did you file the grievance?

I filed two grievances at Wende CF and Coxsdale CF.

2. What did you claim in your grievance? that I was assaulted by several correctional officers leading up to these incidents which occurred

3. What was the result, if any? none grievable issues

4. What steps, if any, did you take to appeal that decision? Is the grievance process completed? If not, explain why not. (Describe all efforts to appeal to the highest level of the grievance process.)

I appealed the decision of the grievance to Sentenced office, in Albany, on the Facility Campus Building at 1220 Washington Avenue.

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F. If you did not file a grievance:

1. If there are any reasons why you did not file a grievance, state them here:

2. If you did not file a grievance but you did inform officials of your claim, state who you informed, when and how, and their response, if any:

G. Please set forth any additional information that is relevant to the exhaustion of your administrative remedies.

(Note: You may attach as exhibits to this complaint any documents related to the exhaustion of your administrative remedies.)

VIII. Previous Lawsuits

The "three strikes rule" bars a prisoner from bringing a civil action or an appeal in federal court without paying the filing fee if that prisoner has "on three or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury." 28 U.S.C. § 1915(g).

To the best of your knowledge, have you had a case dismissed based on this "three strikes rule"?

☒ Yes

☐ No

If yes, state which court dismissed your case, when this occurred, and attach a copy of the order if possible. *the Western District Court*

I left prison on January 6th 2021 and I don't have any access to any of my copies of the grievance(s) since being released from prison, and back out into society

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- A. Have you filed other lawsuits in state or federal court dealing with the same facts involved in this action?

☒ Yes

☐ No

- B. If your answer to A is yes, describe each lawsuit by answering questions 1 through 7 below. (If there is more than one lawsuit, describe the additional lawsuits on another page, using the same format.)

1. Parties to the previous lawsuit

Plaintiff(s) Damecha Harris

Defendant(s) Mr. James Conway, Sheriff and the Erie County DA's office

2. Court (if federal court, name the district; if state court, name the county and State)

Dont know off hand without having access to my personal property

3. Docket or index number

Dont know off hand

4. Name of Judge assigned to your case

Dont know off hand without having access to my personal property

5. Approximate date of filing lawsuit

Call Recall without having excess to my personal property since being Released.

6. Is the case still pending?

☐ Yes

☒ No

If no, give the approximate date of disposition. _____

7. What was the result of the case? (For example: Was the case dismissed? Was judgment entered in your favor? Was the case appealed?)

the case was dismissed by the court

(Rev. 01/21) Complaint for Violation of Civil Rights (Prisoner)

IX. Certification and Closing

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

A. For Parties Without an Attorney

I agree to provide the Clerk's Office with any changes to my address where case-related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Date of signing: Damecha Harris

Signature of Plaintiff

Printed Name of Plaintiff

Prison Identification #

Prison Address

Damecha Harris

DAMECHA HARRIS

92A1389

Coxsackie Corr. Facility P.O. Box - 898

Coxsackie

City

State

Zip Code

B. For Attorneys (Pro-Se)

Date of signing: Damecha Harris

Signature of Attorney

Printed Name of Attorney

Bar Number

Name of Law Firm

Address

City

State

Zip Code

Telephone Number

E-mail Address

Orders on Motions

[6:10-cv-06572-CJS Harris v. Clark et al](#) **CASE CLOSED on 12/09/2010**

CLOSED,[CLOSED_2010](#),ProSe

U.S. DISTRICT COURT

U.S. District Court, Western District of New York

Notice of Electronic Filing

The following transaction was entered on 5/9/2022 at 3:04 PM EDT and filed on 5/9/2022

Case Name: Harris v. Clark et al

Case Number: [6:10-cv-06572-CJS](#)

Filer:

WARNING: CASE CLOSED on 12/09/2010

Document Number: [13](#)

Docket Text:

ORDER denying [12] Motion to Reopen Case. Signed by Hon. Charles J. Siragusa on 5/4/22. Copy of this order mailed to pro se plaintiff at Queens Adult Care, 80-08 45th Avenue, Elmhurst, NY 11373. (KAP)

-CLERK TO FOLLOW UP-

6:10-cv-06572-CJS Notice has been electronically mailed to:

6:10-cv-06572-CJS Notice has been delivered by other means to:

Damecha Harris
92-A-1389
COXSACKIE CORRECTIONAL FACILITY
P.O. Box 200
Coxsackie, NY 12051-0200

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1042579058 [Date=5/9/2022] [FileNumber=5148570-0]
[d4e253f6d8dead06aa9b22dd20e67d544d6232190ebbd3403e65aef45692657cbc3
63f6f4361564a233f71cf64f20a553d056b011571ea494dd56e840e7f9f1]]

MIME-Version:1.0
From:webmaster@nywd.uscourts.gov
To:Courtmail@nywd.uscourts.gov
Bcc:
--Case Participants: Hon. Charles J. Siragusa (charles_siragusa@nywd.uscourts.gov, john_lyle@nywd.uscourts.gov, kathy_allen@nywd.uscourts.gov, kelly_pruden@nywd.uscourts.gov, michael_kehoe@nywd.uscourts.gov)
--Non Case Participants:
--No Notice Sent:

Message-Id:<5148572@nywd.uscourts.gov>
Subject:Activity in Case 6:10-cv-06572-CJS Harris v. Clark et al Order on Motion to Reopen Case
Content-Type: text/html

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.

*****NOTE TO PUBLIC ACCESS USERS***** Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.

U.S. DISTRICT COURT

U.S. District Court, Western District of New York

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Damecha Harris
92-A-1389
COXSACKIE CORRECTIONAL FACILITY
P.O. Box 200

Coxsackie, NY 12051-0200

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1042579058 [Date=5/9/2022] [FileNumber=5148570-0]
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

DAMECHA HARRIS,

Plaintiff,

ORDER

-vs-

10-CV-6572 CJS

FRANK J. CLARK, District Attorney, *et al.*,

Defendants.

On October 12, 2010, Plaintiff commenced this action proceeding *pro se*. On November 4, 2010, the Court dismissed the action without prejudice, see, Order (ECF No. 5). Almost eight years later, on June 6, 2018, Plaintiff filed a motion to amend his dismissed complaint and reopen the action. The Court denied that request. See, Decision and Order, ECF No. 8.

Then, on May 2, 2022, almost twelve years after the Court closed this action, Plaintiff filed a motion (ECF No. 12) to reopen the action, in which he proposes to reassert the claims in his original complaint, as well as new claims against new proposed defendants.

Having considered the matter, it is hereby

ORDERED, that Plaintiff's application (ECF No. 12) is denied as being, *inter alia*, untimely. The action remains closed. Plaintiff will need to commence a new action. In that regard, the Clerk of the Court is directed to send Plaintiff, at his new address, the necessary forms for filing a Section 1983 action. The Court hereby certifies, pursuant to 28 U.S.C. § 1915(a), that any appeal from this Order would not be taken in good faith, and leave to appeal to the Court of Appeals as a poor person is denied. *Coppedge v. United States*, 369 U.S. 438 (1962). Further requests to proceed on appeal *in forma pauperis* should be directed on motion to the United States Court of Appeals for the Second Circuit in accordance with Rule 24 of the Federal Rules of Appellate Procedure.

SO ORDERED.

Dated: Rochester, New York
May 4, 2022

ENTER:


CHARLES J. SIRAGUSA
United States District Judge